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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,190	12/21/2001	Kuniki Kino	506.39083 VX1	4109

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EXAMINER

LILLING, HERBERT J

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 07/01/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Applicati n No.</b>	<b>Applicant(s)</b>	
	10/024,190	KINO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	HERBERT J LILLING	1651	

-- The MAILING DATE f this communication appears on the c ver sheet with the correspondence address --

### Period f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8,10-12 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 8,10-12 and 14-16 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

1. Request is acknowledged of the request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), which has been filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 17, 2003 has been entered.

2. Claims 8, 10-12 and 14-16 are now present in the application.

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 8, drawn to a microorganism belonging to the genus *Escherichia* having the ability to product L-histidine and a resistance to novobiocin, classified in class 435, subclass 252.8.
- II. Claims 10, 11, 15 and 16, drawn to a mutant of a microorganism belonging to the genus *Escherichia* having the ability to produce an L-amino acid and having resistance to a DNA gyrase inhibitor and to an aminoquinoline derivative, classified in class 435, subclass 252.33.
- III. Claim 12, drawn to a microorganism belonging to the genus *Escherichia* having the ability to produce L-histidine and having resistance to a DNA

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gyrase inhibitor and to an aminoquinoline derivative, classified in class 435, subclass 252.33.

IV. Claim 14, drawn to specific NTG mutant strain microorganisms of *Escherichia coli*, classified in Class 435, subclass 252.1.

4. The inventions are distinct, each from the other because:

the claimed microorganisms are separate and distinct from each other in view of the different scope for each claimed microorganism. Invention II are drawn to mutant strains which include NTG mutated strains whereas Invention I is drawn to non-mutated strains. A search and examination would require different computerized searching for the distinct microorganisms. Invention III is separate and patentably distinct from that of Invention I since Invention III does not require the specifics of Invention I.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art **because of their recognized divergent subject matter** and the search required for one invention is not required for the other invention, thusly the restriction for examination purposes as indicated is proper.

5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).


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6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

7. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Examiner Lilling whose telephone number is (703) 308-2034** and **Fax Number** is for applications **Before Final** (703) 872-9306 and **After Final** for applications is 703-872-9307 or SPE Michael Wityshyn whose telephone number is (703) 308-4743. Examiner can be reached Monday-Thursday from about 5:30 A.M. to about 3:00 P.M. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

H.J.Lilling: HJL  
(703) 308-2034  
Art Unit 1651  
June 30, 2003

  
Dr. Herbert J. Lilling  
Primary Examiner  
Group 1600 Art Unit 1651